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RICHARD W. WILKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LB

CV 11 0149

ROBERT SCHWARTZ,
Plaintiff,

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

vs.

UNITED STATES NATIONAL NUCLEAR
SECURITY ADMINISTRATION, an agency
of the U.S. Department of Energy, and BEN C.
JARAMILLO,

Defendants.

I. INTRODUCTION

1. Plaintiff Robert Schwartz (hereinafter "Plaintiff") brings this action to redress violations of the Freedom of Information Act (hereinafter "FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act (hereinafter "APA"), 5 U.S.C. §§ 701-706. Plaintiff challenges the failure of defendant United States National Nuclear Security Administration (hereinafter "Defendant" or "NNSA") and Ben C. Jaramillo (hereinafter "Jaramillo") to provide all responsive records (and all

1 non-exempt portions thereof) requested by Plaintiff in a FOIA request made to Defendant seeking
 2 agency records pertaining to Defendant's operations and activities. Congress enacted FOIA to
 3 provide that members of the public have the right of access to federal agency records or
 4 information, except for those records (or portions of records) that are protected from disclosure by
 5 exemptions and exclusions.

7 II. JURISDICTION, VENUE, AND BASIS FOR RELIEF

8 2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA
 9 citizen suit provision) and 28 U.S.C. § 1331 (federal question) because this action arises under
 10 FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

11 3. Venue in this Court is proper because Plaintiff resides in the district. *See* 5 U.S.C. §
 12 552(a)(4)(B); 28 U.S.C. § 1391(e).

13 4. Declaratory relief is appropriate under 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(F).

14 5. Injunctive relief is appropriate pursuant to 28 U.S.C. § 2202.

16 III. PARTIES

17 6. Plaintiff Robert Schwartz is an attorney residing in Oakland, California. Plaintiff works
 18 with the law firm of Gwilliam, Ivary, Chiosso, Cavalli & Brewer, which is located in Oakland.
 19 Plaintiff represents one-hundred thirty (130) individuals in a wrongful termination action against
 20 Lawrence Livermore National Security, LLC (hereinafter "LLNS"). In 2008, LLNS laid off
 21 approximately four-hundred forty (440) employees, the vast majority of whom were over the age
 22 of forty (40). The plaintiffs allege that the LLNS layoff was discriminatory and unlawful, and
 23 disproportionately led to the involuntary separation of older workers and members of other
 24 protected classes, in violation of California law. Plaintiff sought records relevant to the LLNS
 25 layoff in the FOIA request at issue in this action.

26 ///

1 7. Plaintiff and his clients suffer an informational harm by being denied access to the
2 requested records, which are crucial to the ability of Plaintiff and Plaintiff's clients to prosecute
3 their action. Plaintiff's injuries can be redressed by this suit and granting of the remedies
4 requested herein.

5 8. Defendant United States National Nuclear Security Administration, a separately
6 organized agency within the U.S. Department of Energy, is responsible for the management and
7 security of the nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs.
8 NNSA is in possession and control of the records sought by Plaintiff. As an agency of the
9 executive branch of the United States government, NNSA is subject to FOIA pursuant to 5 U.S.C.
10 § 552(f)(1).
11

12 9. Defendant Ben C. Jaramillo is an Information Program Specialist for the Office of
13 Public Affairs at the NNSA Service Center in Albuquerque, New Mexico.
14

15 **IV. LEGAL FRAMEWORK OF FOIA RELEVANT TO ALL CLAIMS**

16 10. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all
17 non-exempt agency records to those persons who make requests for records that reasonably
18 describe such records and are made in conformance with applicable rules and procedures. *See* 5
19 U.S.C. § 552(a)(3)(A).
20

21 11. Pursuant to FOIA, any reasonably segregable portion of a record shall be provided to
22 any person requesting such record, after deletion of the portions which are exempt under the Act.
23 The amount of information deleted, and the exemption under which the deletion is made, shall be
24 indicated on the released portion of the record, unless including that indication would harm an
25 interest protected by the FOIA exemption under which the deletion is made. 5 U.S.C. § 552(b).
26

27 12. FOIA requires a federal agency to make a final determination on all FOIA requests
28 that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after

1 the receipt of such request, unless the agency provides notice to the requester of “unusual
2 circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. §
3 552(a)(6)(A)-(B).

4 13. FOIA also requires a federal agency to make a final determination on FOIA
5 administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and
6 legal public holidays) after the receipt of such appeal, unless the agency provides notice to the
7 requester of “unusual circumstances” meriting additional time for responding to a FOIA request.
8 5 U.S.C. § 552(a)(6)(A)-(B).

9 14. FOIA expressly provides that a person shall be deemed to have exhausted their
10 administrative remedies if the agency fails to comply with the applicable time limitations provided
11 by 5 U.S.C. § 552(a)(6)(A)(i)-(ii). 5 U.S.C. § 552(a)(6)(C).

12 15. FOIA provides that any person who has not been provided records requested pursuant
13 to FOIA, after exhausting their administrative remedies, may seek legal redress from an
14 appropriate federal district court to “enjoin the agency from withholding agency records and to
15 order the production of any agency records improperly withheld from the complainant.” 5 U.S.C.
16 § 552(a)(4)(B).

17 16. In such a case, the court shall determine the matter de novo, and may examine the
18 contents of such agency records in camera to determine whether such records or any part thereof
19 shall be withheld under any of the FOIA exemptions. The burden is on the agency to sustain its
20 actions. 5 U.S.C. § 552(a)(4)(B).

21 17. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the
22 United States if Plaintiff substantially prevails in this action. 5 U.S.C. § 552(a)(4)(E).

23 ///

24 ///

V. FACTUAL ALLEGATIONS FOR PLAINTIFF'S FOIA REQUEST

18. On or about May 7, 2010, Plaintiff sent a FOIA request to Defendant seeking records regarding the 2007-2008 workforce restructurings at Lawrence Livermore National Laboratory (hereinafter "LLNL") and Los Alamos National Laboratory. The request was limited to records created between January 1, 2007, and the present. Attached hereto as **Exhibit "A"** is a true and correct copy of this FOIA request.

19. On or about May 11, 2010, Jaramillo sent a letter to Plaintiff acknowledging receipt of his FOIA request. Jaramillo sought further information regarding Plaintiff's willingness to pay fees associated with the processing of the request. Jaramillo also provided a control number for the request: 10-186-J. Attached hereto as **Exhibit "B"** is a true and correct copy of this correspondence.

20. Plaintiff and Jaramillo then corresponded via e-mail regarding the scope of Plaintiff's request and the minimum amount threshold for processing the request. On or about June 9, 2010, Plaintiff e-mailed Jaramillo to limit the scope of Plaintiff's request to (i) the adverse impact analysis of the proposed layoffs at LLNL in 2008, which was provided to the U.S. Department of Energy (hereinafter "DOE"); (ii) correspondence between DOE, NNSA, the Livermore Site Office (hereinafter "LSO"), LLNL, and LLNS regarding the adverse impact analysis; and (iii) correspondence between DOE, NNSA, LSO, LLNL, and LLNS regarding the LLNL workforce restructuring that took place in 2007-2008. Plaintiff also set a new minimum amount threshold of \$2,000, but asked that processing of the request not continue until he could speak with Jaramillo. Attached hereto as **Exhibit "C"** is a true and correct copy of this e-mail.

21. On or about June 11, 2010, Plaintiff spoke with Jaramillo regarding the request. Jaramillo stated that he did not think the revised request would exceed the new minimum amount threshold. Jaramillo further stated that he would contact the record-holders.

1 22. On or about July 9, 2010, Plaintiff e-mailed Jaramillo for an update on the status of the
2 request. Attached hereto as **Exhibit "D"** is a true and correct copy of this e-mail.

3 23. Jaramillo responded one week later, on or about July 16, 2010. Jaramillo wrote that
4 documents responsive to the request were under review. Attached hereto as **Exhibit "D"** is a true
5 and correct copy of this e-mail.

6 24. On or about August 10, 2010, Plaintiff e-mailed Jaramillo for an update on the status
7 of this request. Jaramillo never responded to this e-mail. Attached hereto as **Exhibit "E"** is a true
8 and correct copy of this e-mail.

9 25. On or about September 1, 2010, Plaintiff e-mailed Jaramillo for an update on the status
10 of this request. Jaramillo never responded to this e-mail. Attached hereto as **Exhibit "F"** is a true
11 and correct copy of this e-mail.

12 26. On or about September 16, 2010, Plaintiff sent a letter to Jaramillo regarding this
13 request. Plaintiff noted that Defendant was in violation of FOIA. Jaramillo never responded to
14 this letter. Attached hereto as **Exhibit "G"** is a true and correct copy of this correspondence.

15 27. On or about October 28, 2010, Jaramillo e-mailed Plaintiff to provide an update on the
16 status of this request. Jaramillo wrote that documents responsive to this request were being
17 reviewed by general counsel before being released. Jaramillo further wrote that he anticipated
18 sending a response to Plaintiff early the following week. Attached hereto as **Exhibit "H"** is a true
19 and correct copy of this e-mail.

20 28. On or about November 12, 2010, Plaintiff e-mailed Jaramillo for an update on the
21 status of this request. Plaintiff noted that no responsive documents had yet been received and
22 inquired whether they had been mailed. Jaramillo never responded to this e-mail. Attached hereto
23 as **Exhibit "H"** is a true and correct copy of this e-mail.

24 ///

1 29. On or about November 16, 2010, Plaintiff again e-mailed Jaramillo for an update on
2 the status of this request. Attached hereto as **Exhibit "H"** is a true and correct copy of this e-mail.

3 30. On or about November 16, 2010, Jaramillo responded to Plaintiff's e-mail, writing that
4 he was completing his final review of the documents and expected to have a response to Plaintiff
5 that week. Attached hereto as **Exhibit "H"** is a true and correct copy of this e-mail.

6 31. On or about December 3, 2010, Plaintiff e-mailed Jaramillo for an update on the status
7 of this request. Plaintiff noted that no responsive documents had yet been received and sought an
8 explanation for the further delay. Jaramillo never responded to this e-mail. Attached hereto as
9 **Exhibit "H"** is a true and correct copy of this e-mail.

10 32. On or about December 14, 2010, Plaintiff again e-mailed Jaramillo for an update on
11 the status of this request. Attached hereto as **Exhibit "H"** is a true and correct copy of this e-mail.

12 33. On or about December 15, 2010, Jaramillo responded to Plaintiff's e-mail, writing that
13 the Office of General Counsel had just completed their review of the responsive documents.
14 Jaramillo also wrote that he preparing the final response letter and hoped have the responsive
15 documents to Plaintiff "ASAP." Attached hereto as **Exhibit "H"** is a true and correct copy of this
16 e-mail.

17 34. On or about December 15, 2010, Plaintiff e-mailed Jaramillo, asking to be sent an e-
18 mail when the documents have been sent. Jaramillo never responded to this e-mail. Attached
19 hereto as **Exhibit "H"** is a true and correct copy of this e-mail.

20 35. On or about December 17, 2010, J. Gary Gwilliam (hereinafter "Gwilliam"), an
21 associate of Plaintiff, sent a letter to Jaramillo. Gwilliam provided some background on the
22 request and noted that Defendant was in violation of FOIA. Gwilliam wrote that he would be
23 filing suit to compel compliance with FOIA in ten (10) days if he did not receive the responsive
24 documents from Jaramillo's office. Gwilliam enclosed a copy of the complaint. Attached hereto
25
26
27
28

1 as **Exhibit "I"** is a true and correct copy of this correspondence.

2 36. On or about December 22, 2010, Jaramillo e-mailed Plaintiff, writing that he was in
3 receipt of Gwilliam's letter. Jaramillo wrote that he did not believe filing suit would be necessary
4 because he anticipated getting the documents out before the ten (10) day deadline stated in the
5 Gwilliam's letter. Attached hereto as **Exhibit "J"** is a true and correct copy of this e-mail.

6 37. On or about December 28, 2010, Plaintiff e-mailed Jaramillo, asking if the documents
7 had been sent. Attached hereto as **Exhibit "J"** is a true and correct copy of this e-mail.

8 38. On or about December 29, 2010, Jaramillo e-mailed Plaintiff, writing that his response
9 had been signed and would be mailed that day. Attached hereto as **Exhibit "J"** is a true and
10 correct copy of this e-mail.

11 39. On or about January 6, 2011, Plaintiff e-mailed Jaramillo, writing that the response to
12 this request had still not been received. Plaintiff asked for confirmation that the response had been
13 sent and, if possible, a tracking number. Attached hereto as **Exhibit "J"** is a true and correct copy
14 of this e-mail.

15 40. On or about January 7, 2011, Jaramillo e-mailed Plaintiff, writing that the response
16 had been sent via registered mail. Jaramillo also wrote that he could not provide a tracking
17 number. Attached hereto as **Exhibit "J"** is a true and correct copy of this e-mail.

21 VI. CLAIMS FOR RELIEF

22 Count I: Violation of the Freedom of Information Act

23 41. The allegations made in all preceding paragraphs are realleged and incorporated by
24 reference herein.

25 42. Defendant and Jaramillo have violated FOIA by failing to provide Plaintiff with all
26 responsive, non-exempt records, and all non-exempt portions thereof, requested by Plaintiff in his
27 May 7, 2010 FOIA request.

43. By failing to provide Plaintiff with all records responsive to his FOIA request, Defendant and Jaramillo have denied Plaintiff's right to this information provided by law under the Freedom of Information Act.

44. Unless enjoined by this Court, Defendant and Jaramillo will continue to violate Plaintiff's legal rights to access all of the records that he requested in his FOIA request.

45. Plaintiff is directly and adversely affected and aggrieved by Defendant and Jaramillo's failure to provide all records (and all non-exempt portions thereof) responsive to his FOIA request.

46. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to seeking judicial review of Defendant and Jaramillo's failure to provide all records (and all non-exempt portions thereof) responsive to his FOIA request.

47. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

Count II: Violation of the Administrative Procedure Act

48. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

49. Defendant and Jaramillo's failure to disclose records responsive to Plaintiff's May 7, 2010 FOIA request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Defendant and Jaramillo's failure in this manner is arbitrary, capricious, an abuse of discretion, not in accordance with the law, and without observance of procedure required by law; all in violation of the APA.

50. Plaintiff has suffered a legal wrong as a result of Defendant and Jaramillo's failure to comply with the mandates of FOIA. Defendant and Jaramillo's failure to disclose records (and all non-exempt portions thereof) responsive to Plaintiff's FOIA request has injured Plaintiff's interests in public oversight of governmental operations and constitutes a violation of Defendant

and Jaramillo's statutory duties under the APA.

51. Plaintiff is entitled to judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

52. Plaintiff is entitled to costs of disbursements and costs of litigation, including reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. § 2412.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff providing the following relief:

1. Declare that Defendant violated FOIA by failing to provide all non-exempt records, and all non-exempt portions thereof, responsive to Plaintiff's May 7, 2010 FOIA request.

2. Direct by injunction that Defendant immediately provide Plaintiff with all remaining non-exempt documents and records responsive to Plaintiff's FOIA request.

3. Issue a written finding that the circumstances surrounding Defendant's actions raise questions whether Defendant's personnel acted arbitrarily or capriciously with respect to Plaintiff's FOIA request, as provided for by 5 U.S.C. § 552(a)(4)(F).

4. Direct by injunction that defendant NNSA is barred from any and all improper withholdings of agency records.

5. Grant Plaintiff's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E).

6. Maintain jurisdiction over this action until Defendant is in compliance with FOIA, APA, and every order of this Court.

///


///

7. Provide such other relief as the Court deems just and proper.

DATED: January 7, 2011

GWILLIAM, IVARY, CHIOSSO,
CAVALLI & BREWER

By:


GARY GWILLIAM
Attorneys for Plaintiff

#115844v4

GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

ATTORNEYS AT LAW

A Professional Corporation

P.O. Box 2079, Oakland, CA 94604-2079

May 7, 2010

Freedom of Information Act Officer
Office of Public Affairs/FOIA
NNSA/SC
P.O. Box 5400
Albuquerque, NM 87185-5400
Email: foiofficer@doeal.gov

via: electronic mail and U.S. mail

Re: Freedom of Information Act request regarding LLNL's and LANL's 2007-2008 workforce restructuring

To Whom It May Concern:

This is a request under the Freedom of Information Act (FOIA).

I would like to formally request copies of the following:

- All records concerning Lawrence Livermore National Laboratory's (LLNL) 2007-2008 workforce restructuring.
- All correspondence between the National Nuclear Security Administration (NNSA) and the NNSA Livermore Site Office, Lawrence Livermore National Security, LLC and Lawrence Livermore National Laboratory regarding LLNL's 2007-2008 workforce restructuring.
- All records concerning Los Alamos National Laboratory's (LANL) 2007-2008 workforce restructuring.
- All correspondence between NNSA and the NNSA Los Alamos Site Office, Los Alamos National Security, LLC and Los Alamos National Laboratory regarding LANL's 2007-2008 workforce restructuring.

This request is limited to records produced from January 1, 2007, to the present. Correspondence includes, but is not limited to, letters, notes, electronic mail messages (and attachments), and phone logs or notes.

In the event that access to any of the requested records is denied, please note that FOIA provides that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under [FOIA]." 5 U.S.C. § 552(b). I therefore request that I be provided with all non-exempt portions of the requested records that are reasonably segregable. I further request that you describe the deleted material in detail and specify the statutory basis for the denial, as well as your reasons for believing that the alleged

statutory justification applies in each instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in case an appeal is taken. The agency's written justification might also help to avoid unnecessary litigation. Of course, I reserve my right to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) working days from the date of your receipt. Failure to respond in a timely manner shall be viewed as a denial of this request and I may immediately file an administrative appeal or seek judicial relief. Thank you in advance for your prompt reply.

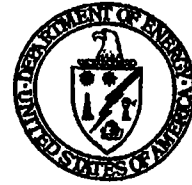
Sincerely,

Robert Schwartz, Esq.
Gwilliam, Ivary, Chiosso, Cavalli & Brewer
1999 Harrison Street, Suite 1600
Oakland, CA 94604-2079
Phone: (510) 832-5411 ext. 240
Fax: (510) 832-1918
rschwartz@giccb.com

#110426



Department of Energy
National Nuclear Security Administration
Service Center
P. O. Box 5400
Albuquerque, NM 87185



May 11, 2010

RECEIVED MAY 19 2010

Mr. Robert Schwartz, Esq.
Gwilliam, Ivary, Chiosso, Cavalli & Brewer
1999 Harrison Street, Suite 1600
Oakland, CA 94604-2079

RECEIPT OF FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Schwartz:

This letter acknowledges the receipt of your May 7, 2010 Freedom of Information Act (FOIA) request. You requested a copy of the following:

1. All records concerning Lawrence Livermore National Laboratory's (LLNL) 2007-2008 workforce restructuring.
2. All correspondence between the National Nuclear Security Administration (NNSA) and the NNSA Livermore Site Office, Lawrence Livermore National Security, LLC and Lawrence Livermore National Laboratory regarding LLNL's 2007-2008 workforce restructuring.
3. All records concerning Los Alamos National Laboratory's (LANL) 2007-2008 workforce restructuring.
4. All correspondence between NNSA and the NNSA Los Alamos Site Office, Los Alamos National Security, LLC and Los Alamos National Laboratory regarding LANL's 2007-2008 workforce restructuring.

We received your request on April 27, 2010.

It is the practice of the National Nuclear Security Administration Service Center, in accordance with the Departmental policy, to process FOIA requests in the approximate order of the date received by this office. A number of requests received prior to yours are pending, and your request will be processed in turn. We will make every effort to respond to your request as quickly as possible.

In your letter you failed to address your willingness to pay fees associated with the processing of your request. We cannot continue to process your request until fees have been addressed. Costs may be charged if they exceed the standard \$15.00 allowance for the search for your requested documents, even if after searching, no documents are found or released. Please contact us to set a minimum amount threshold. If this threshold is met, we will notify you and will hold your request pending further agreement to pay above that threshold. If we do not hear from you within

EXHIBIT B

Mr. Robert Schwartz

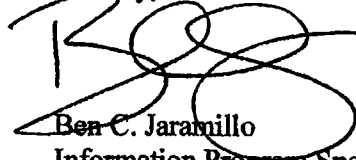
2

May 11, 2010

ten business days from the receipt of this letter, we will consider your request invalid and close the request.

If you have questions concerning the processing of your request, please contact me by telephone at (505) 845-5026, by e-mail at BJaramillo@doeal.gov, or write to the address at the top of the first page. Please reference Control Number FOIA 10-186-J.

Sincerely,

A handwritten signature in black ink, appearing to be "BJ", with a large, stylized flourish extending from the bottom right.

Ben C. Jaramillo
Information Program Specialist
Office of Public Affairs

Rob Schwartz

From: Rob Schwartz
Sent: Wednesday, June 09, 2010 5:00 PM
To: 'Jaramillo, Ben'
Subject: RE: FOIA Control Number 10-186-J

Ben,

Here is what we would like to do:

(1) Eliminate Nos. 3-4 from our initial request. These deal with Los Alamos National Laboratory.

(2) We are specifically requesting the following:

(i) The adverse impact analysis prepared by an external consultant for Lawrence Livermore National Laboratory (LLNL) and/or Lawrence Livermore National Security, LLC (LLNS) to analyze the proposed layoffs at LLNL in 2008 for possible disparate impact on minorities and other protected classifications of employees. The analysis was provided to the Department of Energy (DOE).

(ii) Any correspondence between DOE, the National Nuclear Security Administration (NNSA), the Livermore Site Office (LSO), LLNL, and LLNS regarding the adverse impact analysis.

(iii) Any correspondence between DOE, NNSA, LSO, LLNL, and LLNS regarding the LLNL workforce restructure that took place in 2007-2008. This request includes, but is not limited to, any correspondence regarding the need for the workforce restructuring; budgetary concerns; guidance on the workforce restructuring from DOE, NNSA, or LSO; the 3161 plan; the Voluntary Self Select Option Program; the Involuntary Separation Program; and any other matter related to the workforce restructuring.

Correspondence includes, but is not limited to, letters, notes, electronic mail messages (and attachments), and telephone logs and notes.

We would like to set a new minimum threshold amount of \$2,000. Please do not continue processing this request until we have spoken regarding the above. Please let me know when you are available to discuss these matters.

Sincerely,
Rob Schwartz
(510) 832-5411 ext. 240

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Tuesday, June 08, 2010 7:35 AM
To: Rob Schwartz
Subject: RE: FOIA Control Number 10-186-J

Rob -

That works for me. Please send the information as soon as you have it.

Thanks,

Ben

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Monday, June 07, 2010 5:05 PM
To: Jaramillo, Ben
Subject: RE: FOIA Control Number 10-186-J

Ben,

After consulting with others in my office, we have come up with a plan for this request. We would like to refine the request to limit it and also to prioritize certain documents.

Case 4:11-cv-00149-LB Document 1 Filed 01/11/11 Page 17 of 31
Then we would like to set a new threshold amount. Can you provide further clarification by Wednesday, June 9th. Please advise if this will work.

Thanks,
Rob Schwartz

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Wednesday, June 02, 2010 3:11 PM
To: Rob Schwartz
Subject: RE: FOIA Control Number 10-186-J

That is fine.

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Wednesday, June 02, 2010 1:08 PM
To: Jaramillo, Ben
Subject: RE: FOIA Control Number 10-186-J

Sorry for the delay. Is it alright if I get back to you by the end of the day tomorrow?

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Wednesday, May 26, 2010 10:15 AM
To: Rob Schwartz
Subject: RE: FOIA Control Number 10-186-J

At this point we do not have an estimate. Your request is quite expansive and there are numerous responsive documents. I am sorry that I could not be more descriptive. If you would provide us with a new minimum threshold amount, we will start processing your request again and from there we would be able to have a more clear picture as to cost.

Ben

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Wednesday, May 26, 2010 9:59 AM
To: Jaramillo, Ben
Subject: RE: FOIA Control Number 10-186-J

Ben,

Sorry for the delay in responding. The problem is that you didn't provide any estimate of the cost. Do you have any sense of what the total amount might be?

-Rob

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Wednesday, May 26, 2010 8:35 AM
To: Rob Schwartz
Subject: RE: FOIA Control Number 10-186-J

Mr., Schwartz -

Have you made a decision as to a new minimum amount threshold? I would like to get this information out to the record holders ASAP so that we may continue to process your FOIA request.

Please let me know.

Thanks,

Ben

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Wednesday, May 19, 2010 5:00 PM
To: Jaramillo, Ben
Subject: FOIA Control Number 10-186-J

This is in reply to your letter of May 11, 2010. I would like to set a minimum amount threshold of \$200 for this request. Per your letter, I expect to be notified if this threshold is met. Please confirm.

Thanks,
Rob Schwartz

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the named recipient(s), please notify the sender at the e-mail address and delete this e-mail from your computer. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

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Rob Schwartz

From: Jaramillo, Ben [BJaramillo@doeal.gov]
Sent: Friday, July 16, 2010 1:37 PM
To: Rob Schwartz
Subject: RE: FOIA Request 10-186-J

Mr. Schwartz -

Documents that have been determined to be responsive to your request are currently under review.

Please feel free to contact me again should you need an update on the status of your request.

Thanks,

Ben

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Friday, July 09, 2010 3:56 PM
To: Jaramillo, Ben
Subject: FOIA Request 10-186-J

Ben,

I would like to get an update on FOIA request 10-186-J. I tried to call you, but your phone just kept ringing. Please give me a call at your convenience or respond to this email with an update.

Thanks,
Rob
(510) 832-5411 ext. 240

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Rob Schwartz

From: Rob Schwartz
Sent: Tuesday, August 10, 2010 4:48 PM
To: 'Jaramillo, Ben'
Subject: RE: FOIA Request 10-186-J

Ben,

I would like to get another update on the status of this request. Could you please give me an estimate as to when we will receive responsive documents?

Thanks,
Rob

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Friday, July 16, 2010 1:37 PM
To: Rob Schwartz
Subject: RE: FOIA Request 10-186-J

Mr. Schwartz -

Documents that have been determined to be responsive to your request are currently under review.

Please feel free to contact me again should you need an update on the status of your request.

Thanks,

Ben

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Friday, July 09, 2010 3:56 PM
To: Jaramillo, Ben
Subject: FOIA Request 10-186-J

Ben,

I would like to get an update on FOIA request 10-186-J. I tried to call you, but your phone just kept ringing. Please give me a call at your convenience or respond to this email with an update.

Thanks,
Rob
(510) 832-5411 ext. 240

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Rob Schwartz

From: Rob Schwartz
Sent: Wednesday, September 01, 2010 4:23 PM
To: 'Jaramillo, Ben'
Subject: FW: FOIA Request 10-186-J

Ben,

I never received a response to the email below. Could you please provide an update as to when we will receive documents responsive to this request?

Thanks,
Rob

-----Original Message-----

From: Rob Schwartz
Sent: Tuesday, August 10, 2010 4:48 PM
To: 'Jaramillo, Ben'
Subject: RE: FOIA Request 10-186-J

Ben,

I would like to get another update on the status of this request. Could you please give me an estimate as to when we will receive responsive documents?

Thanks,
Rob

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Friday, July 16, 2010 1:37 PM
To: Rob Schwartz
Subject: RE: FOIA Request 10-186-J

Mr. Schwartz -

Documents that have been determined to be responsive to your request are currently under review.

Please feel free to contact me again should you need an update on the status of your request.

Thanks,

Ben

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Friday, July 09, 2010 3:56 PM
To: Jaramillo, Ben
Subject: FOIA Request 10-186-J

Ben,

I would like to get an update on FOIA request 10-186-J. I tried to call you, but your phone just kept ringing. Please give me a call at your convenience or respond to this email with an update.

Thanks,
Rob
(510) 832-5411 ext. 240

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GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

J. Gary Gwilliam

Steven R. Cavalli

Steven J. Brewer

Randall E. Strauss

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James R. Chiosso
1942-2001

Of Counsel
Eric H. Ivary

Phone 510.832.5411
Fax 510.832.1918
Contra Costa County
Phone 925.820.0335

September 16, 2010

Ben C. Jaramillo
DOE/NNSA Service Center
P.O. Box 5400
Albuquerque, NM 87185
BJaramillo@doeal.gov

RE: Control Number FOIA 10-186-J

Ben,

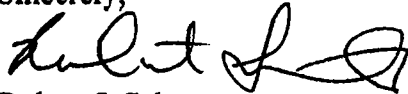
On May 7, 2010, I mailed this office a request under the Freedom of Information Act (FOIA) for records concerning the workforce restructurings at Lawrence Livermore National Laboratory and Los Alamos National Laboratory in 2007-2008. On May 19, 2010, I received a letter acknowledging receipt of this request, asking for a clarification regarding the payment of fees, and providing the control number: FOIA 10-186-J. Through e-mail correspondence on June 9, 2010, the request was revised and the minimum amount threshold was set at \$2,000.00.

On August 10, 2010 and September 1, 2010, I e-mailed you to receive an update on the status of this request. You failed to respond to either e-mail.

Your office is in violation of FOIA. Please be advised that I will be filing suit to compel compliance with FOIA in ten (10) days if I do not receive a response from your office.

Thank you for your courtesy and cooperation.

Sincerely,



Robert J. Schwartz

cc: Carolyn Becknell

#113741v1

EXHIBIT G

Rob Schwartz

From: Rob Schwartz
Sent: Wednesday, December 15, 2010 3:46 PM
To: 'Jaramillo, Ben'
Subject: RE: FOIA Request 10-186-J

Thank you for the update, Ben. Could you please send an email to let me know when the documents have been sent?

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Wednesday, December 15, 2010 2:05 PM
To: Rob Schwartz
Subject: RE: FOIA Request 10-186-J

Mr. Schwartz -

My apologies for the delay in processing your request. The Office of General Counsel just completed their review of the responsive documents and I am preparing the final response letter. I hope to have your responsive documents to you ASAP.

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Tuesday, December 14, 2010 1:30 PM
To: Jaramillo, Ben
Cc: Becknell, Carolyn
Subject: FW: FOIA Request 10-186-J

Ben,

I never received a response to my email below. Could you please update me on the status of this request?

Thanks,
Rob
(510) 832-5411 ext. 240

-----Original Message-----

From: Rob Schwartz
Sent: Friday, December 03, 2010 3:12 PM
To: 'Jaramillo, Ben'
Cc: 'cbecknell@doeal.gov'; 'alexander.morris@hq.doe.gov'
Subject: RE: FOIA Request 10-186-J

Ben,

I still have not received a response to this request. Could you please explain the latest delay? Per your email below, you were supposed to send a response 2 weeks ago. That was several weeks after your earlier email promising to send the documents at the beginning of November.
That email is also provided below.

Thanks,
Rob

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Tuesday, November 16, 2010 12:07 PM
To: Rob Schwartz
Subject: RE: FOIA Request 10-186-J

My apologies, I was out of the office on Friday. I am completing my final review of your documents and expect to have a final response to you this week.

Thanks,

Ben

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Tuesday, November 16, 2010 1:04 PM
To: Jaramillo, Ben
Cc: Becknell, Carolyn
Subject: FW: FOIA Request 10-186-J

Ben,

I still haven't heard back about the status of this request. The documents were supposed to have been sent 2 weeks ago but I still have not received anything. Could you please give me an update?

Thanks,
Rob

-----Original Message-----

From: Rob Schwartz
Sent: Friday, November 12, 2010 10:31 AM
To: 'Jaramillo, Ben'
Subject: RE: FOIA Request 10-186-J

Ben,

I wanted to check on the status of this request. We still have not received any responsive documents. Have they been mailed?

Thanks,
Rob

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Thursday, October 28, 2010 3:11 PM
To: Rob Schwartz
Subject: RE: FOIA Request 10-186-J

Mr. Schwartz -

I wanted to give you a status update on your request. Documents responsive to your request are currently being reviewed by general counsel before being released to you. I anticipate sending those documents to you early next week.

Please let me know if you have any questions.

Thanks,

Ben C. Jaramillo
Information Program Specialist
Office of Public Affairs
National Nuclear Security Administration
Phone: 505-845-5026
Fax: 505-845-5438
Email: BJaramillo@doeal.gov

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J. Gary Gwilliam

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Oakland, California 94612-3528

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www.giccb.com

James R. Chiosso
1942-2001

Of Counsel
Eric H. Ivary

Phone 510.832.5411
Fax 510.832.1918
Contra Costa County
Phone 925.820.0335

December 17, 2010

Ben C. Jaramillo
DOE/NNSA Service Center
P.O. Box 5400
Albuquerque, NM 87185
BJaramillo@doeal.gov

RE: Control Number FOIA 10-186-J

Mr. Jaramillo:

Robert Schwartz is working with our office in the above matter. On May 7, 2010, Mr. Schwartz mailed your office a request under the Freedom of Information Act (FOIA) for records concerning the workforce restructurings at Lawrence Livermore National Laboratory and Los Alamos National Laboratory in 2007-2008. On May 19, 2010, Mr. Schwartz received a letter acknowledging receipt of this request, asking for a clarification regarding the payment of fees, and providing the control number: FOIA 10-186-J. Through e-mail correspondence on June 9, 2010, the request was revised and the minimum amount threshold was set at \$2,000.00.

Throughout August and September, 2010, Mr. Schwartz sought updates from you on the status of this request. You failed to provide any such updates. Finally, on October 28, 2010, you wrote that you anticipated sending a response early the following week.

When this response never arrived, Mr. Schwartz repeatedly followed up with you about the status of this request. On November 16, 2010, you wrote that you expected to have a response to Mr. Schwartz that week.

Once again, this response never arrived. Accordingly, Mr. Schwartz again sought updates from you on the status of this request. On December 15, 2010, you wrote that you hoped to have the responsive documents to Mr. Schwartz "ASAP." Given your track record, this response cannot be trusted. The attached complaint sets forth more details regarding your dilatory response to this request.

Your office is in violation of FOIA. FOIA requires a federal agency to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays,

EXHIBIT I

December 17, 2010

Page 2 of 2

Sundays, and legal public holidays) after the receipt of such request, unless the agency provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B). Your office never requested any additional time to respond to this request.

Please be advised that I will be filing suit to compel compliance with FOIA in ten (10) days if I do not receive the responsive documents from your office. A copy of the complaint is enclosed.

Thank you for your courtesy and cooperation.

Sincerely,



J. Gary Gwilliam

cc: Carolyn Becknell

Enclosure

#116220v2

Rob Schwartz

From: Jaramillo, Ben [BJaramillo@doeal.gov]
Sent: Friday, January 07, 2011 8:33 AM
To: Rob Schwartz
Subject: RE: FOIA 10-186-J

Mr. Schwartz - I can confirm that the response has been sent. I do not have a tracking number, but I do know that it was sent registered mail. You should receive it shortly. Possibly today?

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Thursday, January 06, 2011 1:31 PM
To: Jaramillo, Ben
Subject: RE: FOIA 10-186-J

Ben,

I still have not received your response. Could you please confirm that it has been sent and, if possible, provide a tracking number?

Sincerely,
Robert Schwartz

-----Original Message-----

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Wednesday, December 29, 2010 2:55 PM
To: Jaramillo, Ben; Rob Schwartz
Subject: RE: FOIA 10-186-J

Response has been signed and is in the mail to you today. My apologies for the delay in the processing of your request.

Thanks,

Ben

-----Original Message-----

From: Jaramillo, Ben
Sent: Wednesday, December 29, 2010 2:19 PM
To: 'Rob Schwartz'
Subject: RE: FOIA 10-186-J

Mr. Schwartz -

My apologies for just now responding to you, I was out sick yesterday. I am working on sending you a response to your request today. I will let you know by COB.

Thanks,

Ben

-----Original Message-----

From: Rob Schwartz [mailto:rschwartz@giccb.com]
Sent: Tuesday, December 28, 2010 1:50 PM
To: Jaramillo, Ben
Subject: RE: FOIA 10-186-J

Mr. Jaramillo,

Could you please let me know if the documents have been sent?

Thanks,

From: Jaramillo, Ben [mailto:BJaramillo@doeal.gov]
Sent: Wednesday, December 22, 2010 12:50 PM
To: Rob Schwartz
Subject: FOIA 10-186-J

Mr. Schwartz -

I am in receipt of your firm's letter and copy of complaint. I do not think filing suit will be necessary, I anticipate getting your documents out to you before the ten day deadline as stated in the letter. My apologies for the delay in the processing of your request.

Ben C. Jaramillo
Information Program Specialist
Office of Public Affairs
National Nuclear Security Administration
Phone: 505-845-5026
Fax: 505-845-5438
Email: BJaramillo@doeal.gov <mailto:BJaramillo@doeal.gov>

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